HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.3719 OF 2007

Between:

Dr. Mohd. Rafeeq

…Petitioner

AND

The Government of Andhra Pradesh,
Represented by its Secretary (Projects),
I & CAD (CA-IV) Department, Secretariat,
Hyderabad and two others

...Respondents

: O R D E R :

Counsel for the petitioner : Shri G. Dharma Rao
Counsel for respondent No.3 : Shri P.V. Ramana

July 20, 2007

Per G.S.SINGHVI, CJ

This petition filed for quashing order dated 18.1.2007 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal') in O.A No. 134 of 2007 is a vexatious piece of litigation and is liable to be dismissed with costs, but having carefully scrutinised the entire record, we have refrained from adopting that course.

The petitioner, who possesses the qualification of M.Tech (Structural Engineering) and Ph.D. in Mechanical Engineering, joined service as a Research Assistant in the Irrigation Department of the Government of Andhra Pradesh in June, 1992. He was promoted as Assistant Research Officer in 1996. On 31.12.2003, he represented for promotion to the post of Research Officer. After some time, he filed O.A.No.108 of 2004 with the prayer that the respondents be directed to consider his case for promotion as Research Officer. The same was disposed of by the Tribunal on 8.1.2004 with a direction to the respondents to examine the petitioner's case in accordance with rules. Soon thereafter, the petitioner filed Contempt Application No.347 of 2004. On receipt of the notice of contempt application, respondent No.1 is said to have convened the D.P.C., but the petitioner was not promoted. In June, 2006, the petitioner submitted application under the Right to Information Act, 2005. He then came to know that he has not been adjudged suitable for promotion.

In the affidavit filed by him, the petitioner has made a reference to the Andhra Pradesh Engineering Service (Research Branch) Special Rules and averred that even though he is eligible and qualified for the post of Research Officer and vide order dated 8.1.2004, the Tribunal directed respondent Nos.1 and 2 to consider his case, they have arbitrarily promoted respondent No.3. He has then made a reference to order dated 18.1.2007 passed by the Tribunal in

O.A.No.134 of 2007 and pleaded that the interlocutory order passed by the Tribunal for implementing the recommendations of the Departmental Promotion Committee is vitiated by an error of jurisdiction and is wholly unjustified.

Along with the writ petition, the petitioner filed WPMP No.4734 of 2007 for stay of order dated 9.2.2007 passed by respondent No.2 for promotion of respondent No.3 as Research Officer.

While issuing rule nisi on 27.2.2007, this Court passed interim stay in terms of the prayer made in WPMP No.4734 of 2007.

At the hearing, learned counsel for the parties conceded that O.A No.134 of 2007 filed by respondent No.3 for implementation of the recommendations of the Departmental Promotion Committee in the matter of promotion to the post of Research Officer as also O.A No.353 of 2007 filed by the petitioner claiming promotion to the post of Research Officer are pending before the Tribunal. Therefore, we do not consider it proper to express opinion on the merits and demerits of the case set up by either party. However, we cannot restrain ourselves from making a remark that order dated 18.1.2007 passed by the learned Judicial Member of the Tribunal is against the basic canons of service jurisprudence. It needs no reiteration that the recommendations made by the Public Service Commissions and other recruiting agencies do not create indefeasible right in favour of the selected candidates and they cannot seek direction for promotion/appointment. If the court feels convinced that a person, who is legitimately entitled to be appointed, has been deprived of appointment/promotion, then a direction for consideration of his case can be issued. Only in rarest of rare case, the court or a body like the Tribunal can issue direction for appointment or promotion. In any case, an interlocutory judicial intervention in the matter of promotion and that too in mandatory form is totally unwarranted because such an

order leaves nothing to be adjudicated in the main matter. Unfortunately, the learned Judicial Member ignored this basic canon and passed interim order dated 18.1.2007 for promotion of respondent No.3. By doing so, the learned Judicial Member rendered the main application virtually infructuous because after issue of order dated 9.2.2007 by respondent No.2 for promotion of respondent No.3 as Research Officer, nothing remains to be decided by the Tribunal in the main case.

Shri P.V. Ramana, learned counsel for respondent No.3 was at loss to explain as to what remains to be decided in the original application filed by his client.

Respondent No.3 can claim good company because the petitioner too succeeded in persuading the Division Bench to pass an interim direction qua order dated 9.2.2007, whereby respondent No.3 was promoted as Research Officer. At the cost of repetition, we deem it necessary to observe that in the main petition, the petitioner's prayer is confined to his challenge to order dated 18.1.2007. We are surprised to note that the prayer made in the miscellaneous petition was beyond the scope of the prayer made in the main petition and the Division Bench passed interim order without regard to the scope of the prayer of the main case.

We would have delved into the matter at greater length, but keeping in view the fact that the original applications filed by the contesting parties are pending, we leave the matter with the hope and trust that in future, the learned Members of the Tribunal will exercise restraint in passing interlocutory orders in such matters and exercise their discretion only after satisfying themselves about the existence of strong prima facie case, balance of convenience, irreparable injury and public interest. We also hope that the orders passed by the Tribunal on interlocutory applications will reflect application of mind to these factors.

With the above observations, the writ petition is dismissed. However, liberty is given to the petitioner to file application for impleadment as party in O.A.No.134 of 2007.

As a sequel to dismissal of the writ petition, WPMP No.4734 of 2007 and WVMP No.649, 720 and 832 of 2007 are also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

July 20, 2007

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